

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 20-015-18-1-5-00952-19
Petitioners: My Properties, LLC
Respondent: Elkhart County Assessor
Parcel: 20-11-03-355-001.000-015
Assessment Year: 2018

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. My Properties, LLC (“My Properties”) appealed its 2018 assessment of \$87,700 for a two-unit apartment building located at 618 Middlebury Street in Goshen to the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA denied the relief they sought and maintained the assessed value at \$87,700. My Properties timely appealed to the Board, electing to proceed under the Board’s small claims’ procedures.
2. On August 5, 2020, Joseph Stanford, Administrative Law Judge (“ALJ”) heard the case telephonically. Neither the Board nor the ALJ inspected the property.
3. Myron Borntreger, President, appeared for My Properties and was sworn as a witness. Attorney Beth Henkel represented the Assessor. Gavin Fisher, an Indiana licensed residential appraiser, was sworn as the Assessor’s witness.

RECORD

4. The official record for this matter is comprised of the following:

Petitioner Exhibit 1:	Assessor’s Evaluation Form
Petitioner Exhibit 2:	Rental data collection sheet
Respondent Exhibit R-1:	Appraisal of Subject Property
Respondent Exhibit R-2:	Property Record Card of Subject

5. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or ALJ; and (3) these findings and conclusions.

SUMMARY OF CONTENTIONS

6. The Assessor:

- a. The Assessor contended that the property's 2018 market value-in-use is reflected in the appraisal of \$77,500 which is lower than the PTABOA final determination but higher than the value My Properties contends is accurate at \$51,750. The appraisal, conducted by an Indiana licensed residential appraiser, Gavin Fisher, is compliant with the Uniform Standards of Professional Appraisal Practice ("USPAP") and reflects the value retrospective to January 1, 2018. *Fisher testimony, Resp't Ex. R-1.*
- b. Fisher testified that he developed the income and sales-comparison approaches to value. In developing the income approach, he applied a gross rent multiplier ("GRM") of 57.5 to a market rent of \$1,350 per month. He extracted a GRM of 57.5 from comparable rents detailed in his appraisal. For comparable properties, he used three single-family structures converted to multi-unit apartments, all over 100 years old, located in the same market segment as the subject. His income approach yielded a value of \$77,625. He gave the most weight to this approach. *Fisher testimony; Resp't Ex. R-1.*
- c. Fisher explained that he also gave some consideration to the sales-comparison approach. In developing this approach, he relied on three comparable sales of the same properties he also used for his income valuation. Two sales occurred within six months of the subject property's assessed valuation date. The third sale took place within 24 months of it but he did not account for the time difference because the market remained stable. He adjusted sale prices to account for differences in the number of rental units in each building. His sales-comparison approach yielded a value of \$75,000. *Fisher testimony; Resp't Ex. R-1.*
- d. The Assessor contended that she complied with the Indiana Code requirements, using the GRM as the preferred method of valuation for buildings with between one and four rental units. Fisher's reconciled calculation of \$77,500 is an accurate reflection of the 2018 market value-in-use after reconciling the two values he developed from the income and sales comparison approaches. Accordingly, the Assessor contended, the subject property's 2018 assessed value should be \$77,500 to reflect the USPAP-compliant appraisal value. *Fisher testimony; Resp't Ex. R-1.*

7. My Properties:

- a. My Properties contended that the subject property's assessed value is too high based on its poor condition and actual combined rent of \$900 per month for both two-bedroom units. The 2018 value should be \$51,750 instead of \$87,700. In the alternative, the Board should find that the market value-in-use is reflected in Fisher's appraisal of \$77,500. *Borntrager testimony.*

- b. The Assessor must calculate the assessed value using the actual rental data for the units, which is \$900 per month, not the market rent of \$1,350 Fisher used and which My Properties contended is grossly inflated. My Properties has difficulty renting the units. To keep them rented, they must set rents at significantly lower than market rate. *Borntrager testimony; Pet'r Ex. 1, 2.*
- c. The property's interior and finishes are old and outdated, which contributes to its lower market value-in-use. The units are functionally obsolete. The interior is still reflective of the 1950's. The second floor is a half-story with sloped ceilings, which significantly reduces the usable space of the building. *Borntrager testimony.*
- d. The building is in worse condition than comparison properties and in poor condition generally. My Properties has not upgraded the units because the cost would be too great in relation to any rent increase it could get. The 2018 assessed value is too high based on the poor condition, outdated interior, and necessary below market rents. *Borntrager testimony.*

BURDEN OF PROOF

8. The Assessor has the Burden

- a. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003). The burden-shifting statute found in Ind. Code § 6-1.1-15-17.2 includes an exception to that general rule and requires the Assessor to make a prima facie case that the assessed value under appeal is correct in some instances. .
- b. Ind. Code § 6-1.1-15-17.2 applies to an appeal if the assessed value is an increase of more than 5% over the assessed value for the same property from the prior tax year. Ind. Code § 6-1.1-15-17.2 (a). In this appeal, the assessed value increased more than 5%, from \$62,200 in 2017 to \$87,700 in 2018. Thus, the Assessor has the burden of proving that the assessment is correct. Ind. Code § 6-1.1-15-17.2(b).
- c. The Assessor acknowledged that the 2018 assessed value exceeded a 5% increase from the 2017 value and accepted the burden of proof. We agree that the Assessor has the burden.

ANALYSIS

- 9. The Assessor made a prima facie case that the Board should change the assessed value to \$77,500, based upon the USPAP-compliant appraisal she offered as evidence.

- a. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
- b. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For a 2018 assessment, the valuation date was January 1, 2018. *See* Ind. Code § 6-1.1-2-1.5.
- c. The most effective method to establish value can be through the presentation of a market value-in-use appraisal, completed in conformance with USPAP. *O'Donnell*, 854 N.E.2d at 94. Here, the Assessor offered a USPAP-compliant appraisal prepared by Gavin Fisher, an Indiana licensed residential appraiser. Fisher estimated the subject property's market value-in-use to be \$77,500 retrospective to January 1, 2018.
- d. Fisher explained key aspects of his appraisal, noting that he chose three similar converted properties over 100 years old in the same market area with similar physical conditions and age in developing both his income and sales comparison approaches. He adjusted for the number of units and calculated a GRM, reaching a value of \$77,625 for the income approach.
- e. In developing the sales comparison approach, he used the same comparison properties. Two sold within six months of the valuation date, and the other sold within two years in a stable market, which he testified was the reason he did not need to make a time adjustment for the latter sale. He adjusted based on the number of units in each property. Based on this approach he reached a valuation of \$75,000.
- f. For his final valuation, he placed the most weight on the income approach, noting that Ind. Code § 6-1.1-4-39 (b) states that the preferred method of valuation for rental apartments between one and four units is the GRM. For his final value retrospective to January 1, 2018, Fisher calculated market value-in-use at \$77,500 by using market rents to calculate the GRM from properties similar in age, condition, and use. *See Indiana MHC, LLC v. Scott County Assessor*, 987 N.E. 2d 1182, 1185-1186 (Ind. Tax Court 2013) for a discussion of the use of market rents in income capitalization methods for appraising properties.
- g. While My Properties testified about some characteristics of the subject property, they offered no market evidence to either rebut Fisher's appraisal or support the

lower value of \$51,750 they requested. While it contended that the property was in poor condition, Fisher noted its condition as “fair” which was the same condition of Fisher’s comparison properties. My Properties has not provided evidence proving that the subject property is substantially inferior to Fisher’s comparables.

- h. Although My Properties offers the units for rent at below market rates to compensate for its contended other issues, this was not sufficient in and of itself to overcome the Assessor’s prima facie case for an assessed value of \$77,500 based upon the USPAP-compliant appraisal. My Properties also requested that if the Board did not find evidence to support their contention that \$51,750 should be the value for 2018, that the Board should, in the alternative, issue a decision ordering that the assessed value be changed to \$77,500.
- i. The Assessor, through a USPAP-compliant appraisal, supported by testimony from an Indiana licensed appraiser who walked the Board through his valuation analysis, met her burden of proof to support a 2018 assessed value of \$77,500.

CONCLUSION

- 10. The Board finds for the Assessor and orders that the property’s 2018 assessed value be changed to reflect the appraisal value of \$77,500. She provided a USPAP-compliant appraisal supported by testimony from an Indiana licensed residential appraiser. My Properties did not successfully impeach the credibility of the appraisal or the testimony of the appraiser. My Properties also requested that as an alternative, the Board find that the 2018 assessed value was \$77,500. Thus, the Assessor met her burden of proof.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Board finds for the Assessor and orders that the 2018 assessed value be changed to \$77,500.

ISSUED: November 4, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.